

Lawson Mardon U.S.A., Inc. and Graphic Communications Local Union 619M, AFL-CIO-CLC, Petitioner. Case 9-RC-17222

November 16, 2000

DECISION ON REVIEW AND ORDER
BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN

On March 31, 1999, the Regional Director for Region 9 issued a Decision and Direction of Election (pertinent portions are attached as an appendix), in which he found that the petitioned-for unit of production employees employed by the Employer, excluding production employees employed by Pharma Center Shelby, Inc. (a single employer with the Employer), and the Employer's maintenance employees, is an appropriate unit for bargaining.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that the appropriate unit must include the production employees employed by Pharma Center Shelby, Inc. (Pharma Center), which is located under the same roof as the Employer and separated by air-locked doors. The Employer further contended that the maintenance employees who maintain and repair production machinery for both operations must also be included in the bargaining unit. On April 26, 1999, the Board granted the Employer's request for review.

The Board has delegated its authority in this proceeding to a three-member panel.

We have carefully considered the entire record in this case, including the Employer's brief on review, and have decided to affirm the Regional Director's conclusion that the petitioned-for unit of production employees employed by the Employer is an appropriate unit for bargaining. For the reasons set forth in the Regional Director's decision, we also affirm the Regional Director's finding that the evidence is insufficient to compel the inclusion of the maintenance employees in the unit found appropriate. See *Capri-Sun, Inc.*, 330 NLRB No. 158 (2000) (noting Board's longstanding policy to find petitioned-for maintenance units where maintenance employees have requisite community of interest and there is no history of bargaining on more comprehensive basis).

The Employer is engaged in the printing and production of food packaging products, and Pharma Center produces pharmaceutical packaging products. Prior to 1994, the Employer produced both food related and pharmaceutical packaging products. In 1994, the Employer's parent corporation built a new addition to the Employer's facility dedicated to pharmaceutical packaging. Pharma

Center is separated from the Employer's premises by air-locked doors, and occupies a wing of the Employer's facility encompassing approximately 50,000 square feet (the overall facility is 300,000 square feet).

For the reasons set forth by the Regional Director and discussed below, we agree with the Regional Director that, based on a traditional community-of-interest analysis, the evidence is insufficient to demonstrate that even though the Employer and Pharma Center Shelby, Inc. constitute a single employer that such a substantial community of interest exists between their employees so as to require their inclusion in the same unit.¹ See *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976) (a determination that two entities constitute a single employer does not establish that an employerwide unit is appropriate); *Peter Kiewit Sons Co.*, 231 NLRB 76 (1977) ("in determining the scope of the unit [the Board is] concerned with the community of interest of the employees involved"; employees had "distinct and separate" community of interests); *Edenwald Construction Co.*, 294 NLRB 297 (1989) (a finding of single-employer status does not in itself mean that the employees of both entities composing the single employer will be included in a single-bargaining unit covered by a collective-bargaining contract signed by only one of the nominally separate employers; in determining the scope of the unit the primary concern is the community of interest of the employees involved).²

Significantly, as found by the Regional Director, the Employer's production employees have separate immediate and intermediate daily supervision from those in Pharma Center.³ Moreover, there is almost no temporary interchange between the Employer's production employees and those in Pharma Center, and the current instances of permanent interchange are not substantial. Further,

¹ Although the Regional Director set forth the law involving the single-facility presumption, he clearly analyzed the case from a community-of-interest perspective. As noted, in agreement with the Regional Director, we find that the petitioned-for unit enjoys a separate community of interest from Pharma Center employees. We therefore find it unnecessary to reach the issue of whether the Regional Director properly applied the single-facility presumption in finding the petitioned-for production unit to be appropriate.

² Cf. *Centurion Auto Transport*, 329 NLRB No. 42 (1999) (Board rejects single employer's argument that only multilocation unit was appropriate, instead applying traditional presumption involving separate locations to unit determination).

³ As noted by the Regional Director, although the human resources department initially screens job applicants for both entities, the applicants are interviewed and approved by the supervisory staff of the respective entities. Shift supervisors direct daily work production and initiate disciplinary action. The supervisors in each entity determine the wage increases of individual employees, based on performance evaluations. Further, there is no evidence that supervisors interchange or routinely oversee the work of the other operation.

some of the incentives available to the Employer's employees and those at Pharma Center have been different.

The Pharma Center operations are housed in a separate area from the Employer, and the record supports the Regional Director's finding that the Pharma Center is housed in a more "pristine" environment than the Employer. In addition, uniforms worn by the Employer's employees are easily distinguishable from those worn by the Pharma Center employees. Finally, the entities use somewhat different machinery, manufacture different products, have different customers, and their own marketing, sales, and customer service departments.

In affirming the Regional Director, we note that to the extent there is integration between the two entities, it appears in substantial degree to be product integration, which the Board has found to be a less significant factor than other types of integration in determining an appropriate bargaining unit. See *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). In this regard, both entities are engaged to a significant degree in performing interrelated production tasks for their respective customers. Thus, both entities rely on the other's machinery to produce certain items that their own machinery cannot handle. The Employer performs approximately 20 percent of the Pharma Center's production requirements. Pharma Center, in turn, performs 5 to 10 percent of the Employer's production functions. The associated costs are negotiated between the Companies and then charged between accounts.

Moreover, the amount of daily contact between the Employer's production employees and the Pharma Center employees is not substantial enough to compel the inclusion of the Pharma Center employees in the unit. Although the Employer provides support services to Pharma in a variety of areas, these services involve only about 60 of the Employer's 148 employees. The record does not establish that the level of daily contact among these employees and the Pharma Center employees is extensive. It appears that the primary contact involves transporting the products or materials to and from the Employer's side, and the extent of this contact is unclear.

Accordingly, based on the foregoing, the Regional Director's Decision and Direction of Election is affirmed.

ORDER

The Regional Director's Decision and Direction of Election is affirmed. The case is remanded to the Regional Director for further appropriate action.

APPENDIX

DECISION AND DIRECTION OF ELECTION

....

5. The Employer, a corporation, is engaged in the manufacture of food packaging products at its Shelbyville, Kentucky facility where it employs approximately 148 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised solely of the Employer's production employees, including all press operators, assistant operators, helpers, slitter operators, die cutters, packers, material handlers, recycle attendants, shipping and receiving employees, cylinder retrieval employees, ink technicians, parts, washers and mixers employees, and quality assurance lab technicians, but excluding the standard exclusions and approximately 20 maintenance employees. The Employer contends that it is a single employer with Pharma Center Shelbyville Inc. and, contrary to the Petitioner, maintains that the only appropriate unit for collective bargaining is an overall unit including employees of both corporate entities. Contrary to the Petitioner, the Employer also maintains that the community of interest shared by all of its employees compels the inclusion of the maintenance employees in the unit. Finally, the Petitioner would exclude Wayne Aldridge, lead laboratory technician, from the unit apparently as a statutory supervisor, while the Employer contends that he is at most a lead person properly included in the unit.

The Employer is engaged in the printing and production of durable packaging by transforming materials through lamination, extrusion or adhesion processes into single structure containers. Prior to 1994, the Employer produced both food related and pharmaceutical packaging products. In 1994, the Employer's parent corporation built a new addition to the Shelbyville facility that was dedicated to pharmaceutical packaging. That operation was subsequently incorporated as a separate entity, Pharma Center Shelbyville Inc. (Pharma Center) in August 1998. Pharma Center, like the Employer, is a wholly owned subsidiary of Alusuisse Lonza of America, Inc. Although the two corporations have different customers, their own sales departments and separate production employee complements, they share the same facility, certain administrative staff, and support services.

Administrative responsibility for the Employer's daily operations and for the overall facility, which encompasses approximately 300,000 square feet, is vested in Herman Grilliot, the Employer's site manager. Reporting directly to Grilliot are Mark Hvidhyld, operations manager, who oversees both production and maintenance operations, and John R. Poehlein, the human resources manager. The Employer has approximately 148 production, 20 maintenance, and some quality assurance employees who are scheduled to work on either a 12-hour shift or on one of three 8-hour shifts. Pharma Center's general manager, Hans Buschman, who is assisted by the production manager, Mary Czarnopys, is in charge of the day-to-day operation of Pharma Center, which occupies a new wing to the Shelbyville facility encompassing approximately 50,000 square feet. Pharma Center has a separate air-filtration system and is separated from the Employer's premises by air-locked doors. It employs approximately 35 production and quality assurance employees who work on one of three 8-hour shifts.

The Employer's operations include rotogravure printing, flexographic printing, adhesion lamination, extrusion lamination, slitting and finishing applications (including die-cutting) as well as associated production functions such as cylinder retrieval and roll grinding, inks mixing and parts washing, supplies warehousing, recycling, quality assurance, shipping and receiving, and maintenance. Although it is newer, much of the machinery in Pharma Center is substantially similar to that used by the Employer. However, Pharma Center's presses, contrary to those of the Employer, can only accommodate a narrow width of material.⁴ Further, Pharma Center lacks the capacity to perform extrusion lamination and is dependent upon the Employer to perform various auxiliary production services. The record discloses that the Employer performs approximately 20 percent of Pharma Center's production requirements and the associated costs are negotiated between the companies and then charged between accounts. Pharma Center, in turn, performs some work for the Employer, generally 5 to 10 percent of the Employer's production output.

The human resources department handles all personnel functions for both the Employer and Pharma Center. Applicants for job vacancies are initially screened by human resources and potentially acceptable candidates are then referred to the individual corporations for interviews. Although Poehlein is employed by the Employer and reports directly to Grilliot, he is also responsible to Buschman. Both Grilliot and Buschman, in consultation with Poehlein, determine the annual wage rates and pay ranges for all employee job classifications at the facility. Each individual employee's wage rate is determined by an annual performance review completed by that person's immediate supervisor, which is then reviewed and approved by the appropriate corporate manager. The Employer and Pharma Center have separate payrolls, but both are prepared by the human resources department.

Employees at the facility, whether employed by Pharma Center or the Employer, share certain common working conditions and enjoy similar benefits. Thus, all employees, including those in the maintenance department, use the same parking area located near the entrance to the Employer's operations⁵ and the same timeclocks. Pharma Center employees may traverse the Employer's portion of the building to reach the Pharma Center production area. All employees, including maintenance employees, are subject to the same rules and disciplinary procedure, receive the same handbook, attend monthly safety meetings, have access to lockers, and can use any breakrooms in the facility. Job vacancies, whether for the Employer or Pharma Center, are posted on bulletin boards throughout the facility and employees seeking a different position utilize the same job bid form. The job descriptions in effect for certain production positions are the same for the employees of both the Employer and Pharma Center. Finally, all employees enjoy similar benefits, including service and perfect attendance recognition awards,

participation in a profit-sharing plan, a 401(k) plan, paid vacation, 10 paid holidays, personal absence allowance, bereavement leave, jury duty pay, an employee assistance program, and various insurance policies such as health, life, short-and long-term disability, death and dismemberment and travel accident coverage. In addition, all employees are invited to annual facilitywide events such as a safety fair, Christmas party, and Easter egg hunt. Although all employees wear uniforms, those worn by the Employer's employees are easily distinguishable from those of Pharma Center employees.

Despite the general uniformity of employment conditions described above, there have been differences in incentives available to the respective employees of the Employer and Pharma Center. For example, in 1998, only the Pharma Center employees were given a cruise. That same year, the Employer sponsored a cookout only for its employees. Pharma Center employees each received a \$1000 bonus in 1998 for exceeding a performance based goal. No such program was in effect for the Employer's employees.⁶ However, in 1998, Pharma Center made available to the Employer, in recognition of the assistance provided by the shared services to Pharma Center by the Employer's employees, \$21,000. The Employer, out of this amount, gave each of its employees, including those in the maintenance department, \$100. The employees for the two entities, as previously noted, have completely separate immediate, as well as intermediary, supervision.

Transfers between employees of the Employer and Pharma Center, respectively, have been limited. The record discloses that some job vacancies for the Pharma Center's initial employee complement and much of its supervisory staff were filled by bids from the Employer's employees. However, since January 1998, there have only been three successful bidders from the Employer's employees for vacancies in the Pharma Center. During that same timeframe, only one employee has transferred from Pharma Center to the Employer. Similarly, temporary transfers appear to be almost nonexistent. Although the record in this regard is based primarily on anecdotal reports rather than documentation, it appears that the Employer's employees worked no more than 40 hours total during the last year at Pharma Center. Pharma Center employees (primarily one employee interested in acquiring overtime work) worked approximately 48 hours total for the Employer during the same time period.

The maintenance department services all machinery and equipment at the facility. Approximately 20 electrical technicians and maintenance mechanics work directly under the supervision of Tim Brandenburg, electrical engineer supervisor, and Terry Scharfer, mechanical engineer supervisor, both of whom report to Hvidhyld. Hvidhyld holds weekly meetings with the maintenance staff. In the event that Brandenburg or Scharfer, who generally work day-shift hours, is unavailable, mechanics are responsible to the shift supervisor on duty. The record suggests that the shift supervisor's primary function with

⁴ Materials run on the Employer's presses are usually about 50 inches wide whereas Pharma Center's equipment handles material approximately 35 inches in width.

⁵ Although Pharma Center has a separate parking lot and entrance, such access is limited to its administrative and managerial staff.

⁶ The Employer asserts that all employees at the facility, including those within Pharma Center, received the same bonus in 1997. The record does not disclose whether the Pharma Center employees were employed by the Employer or a separate entity at that time.

respect to maintenance employees is to determine the priority of certain repairs. Although shift supervisors have the authority to discipline maintenance employees, there is no evidence that any such actions have occurred. Maintenance employees repair and modify plant machinery, fabricate necessary parts, and take care of the building and grounds. The maintenance shop, which contains a lathe, milling machine, and other necessary equipment, is located at the north end of the Employer's facility and is enclosed by an 8-foot tall open weave fence. Maintenance employees spend the majority of their time responding to service calls throughout the facility, including the Pharma Center.

Although maintenance department employees have daily contact with production employees, their work interactions are largely limited to discussions about machinery malfunctions. Occasionally production employees may assist in the repair of equipment by handing tools to a mechanic, particularly in the event that another maintenance employee is unavailable. Mechanics have trained some operators to make minor repairs to their own machines and, on one occasion, a press crew assisted in rebuilding a press by changing the bearings. During plant shutdowns, production employees occasionally volunteer to help in performing building maintenance tasks such as painting or fixing widows. Despite the fact that no special licenses or certifications are required, almost all maintenance jobs are filled by outside applicants with some experience. Although maintenance positions, like other job vacancies, are posted for internal bidding, only two of the Employer's production employees have bid into the maintenance department. Both transfers occurred more than 3 years ago and both employees hold lower labor grades than the other maintenance mechanics. Most maintenance employees are classified at labor grades 11 or 12, which is equivalent to that of a press operator's position, which is the highest paid production classification. However, two maintenance employees, the mechanical project technician and the electrical project technician, are classified at labor grade 14 and are the Employer's highest hourly paid employees.

The Single-Employer Unit Issue

Contrary to the Petitioner, the Employer asserts that it constitutes a single employer with Pharma Center because the two corporate entities operate as an integrated enterprise. In this regard, the Employer notes that both corporations are wholly owned subsidiaries of Alusuisse Lonza of America, Inc. Although Herman Grilliot, the Employer's site manager, and Hans Buschman, Pharma Center's general manager, report to different executives, their respective superiors are ultimately responsible to the same executive within Alusuisse Lonza of Switzerland, Ltd., the parent corporation. The corporations have separate telephone numbers and addresses, but share a common building, which is situated on premises owned by the parent corporation. Each corporation utilizes the services of one human resources department that, as noted above, maintains all personnel files, handles all employment opportunities, including hiring for vacancies, prepares the payrolls and has a common wage and fringe benefits program. All employees are given the same handbook and are subject to the same rules and

disciplinary procedures. Finally, the Employer, as a consequence of its particular resources, performs approximately 20 percent of Pharma Center's work orders and provides support services in a variety of areas, including shipping and receiving, cylinder grinding, and ink mixing. Pharma Center, in turn, handles between 5 and 10 percent of the Employer's required production.

In determining whether two or more separate entities are sufficiently integrated to be considered a single employer, the Board looks to four principal factors: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. Although no one factor is controlling, particular emphasis is generally placed on centralized control of labor relations. See *Peter Vitalie Co.*, 310 NLRB 865, 867 (1993). Here, it is clear that the Employer and Pharma Center have common ownership and are engaged to a significant degree in performing interrelated production tasks for their respective customers. Thus, both entities rely on the other's machinery to produce certain items, which their own equipment cannot handle. Pharma Center, in particular, is dependent on the Employer for a range of ancillary production services such as maintenance, shipping and receiving, materials storage, and cylinder retrieval. Finally, both corporations utilize one human relations department to administer common personnel policies and have established a facilitywide wage and fringe benefits program applicable to all employees. Accordingly, given the record evidence as a whole, I find, in argument with the Employer, that the Employer and Pharma Center constitute a single employer. See, e.g., *Peter Vitalie Co.*, *supra*.

A determination of single employer status does not, however, resolve the issue of whether the requested unit is appropriate. In this regard, it should be noted that analysis of single-employer status focuses on ownership, structure, and integrated control of separate corporations. Consideration of both the scope and composition of the bargaining unit, however, require evaluation of traditional community of interest factors. See *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976); *Edenwald Construction Co.*, 294 NLRB 297 (1989).

Pharma Center Employees

A single-plant or corporate unit is presumptively appropriate, absent a bargaining history in a more comprehensive unit or a degree of functional integration that effectively negates its separate identity. *A-I Fire Protection*, 233 NLRB 38 (1977); *Black & Decker Mfg. Co.*, 147 NLRB 825, 827-828 (1964). In determining whether the presumption has been rebutted, the Board generally considers the same factors used in analyzing whether a community of interest exists between employees, including central control over daily operations and labor relations, the degree of separate autonomy, proximity of the operations, similarity of skills, functions, and working conditions among employees, and the degree of employee interchange, particularly on a temporary basis. See *Executive Resources Associates*, 301 NLRB 400, 401 (1991). After carefully considering the record evidence and the arguments of the parties at the hearing and in the Employer's brief, I find there is insuffi-

cient evidence to rebut the presumption of a unit limited to the Employer's operation or to demonstrate that such a substantial community of interest exists between employees of Pharma Center and the Employer so as to compel their inclusion in the same unit.

Although the Employer and Pharma Center share a single facility, operate under centrally determined personnel policies, utilize a common wage and benefits structure for their respective employees and have somewhat integrated manufacturing operations, the degree of autonomy between the two entities shows that the employees sought by the Petitioner constitute an appropriate unit. Notwithstanding the centralized personnel administration, it is clear that the Employer's employees have separate daily supervision that substantially affects their working conditions. Thus, the human resources department initially screens job applicants, but they are interviewed and approved by the supervisory staff of the respective entities. Shift supervisors direct daily work production and initiate disciplinary action. There is no evidence that supervisors interchange or routinely oversee the work of the other operation. Although limited in range, wage increases are based on supervisory evaluations of the respective corporate entities. Employees of each entity wear distinctive uniforms and there are some differences in tangential fringe benefits such as the 1998 cruise and performance incentive program for Pharma Center employees.

Despite the accessibility between the Employer's operations and that of Pharma Center, the record discloses that Pharma Center's operations are housed in a separate area and in a more pristine environment. Employees utilize similar skills, but the record discloses that in 1994 when employees started to staff the Pharma Center, some "on the job" training was necessary. Moreover, the machinery used by each operation is somewhat different. In contrast to the Employer's equipment, which accommodates wider cylinders, Pharma Center's machinery is newer and produces narrower materials. Pharma Center has no extrusion lamination equipment and any such work required by its customers is performed solely by the Employer's employees. The evidence of minimal interchange between the two employee complements underscores the distinct nature of the operations. In 1998, only 4 of the 17 vacancies filled internally were the consequence of transfers. More importantly, temporary interchange between the employees of the Employer and Pharma Center is almost nonexistent.

Although the more comprehensive unit proposed by the Employer may also be appropriate for bargaining purposes and certain factors support such a conclusion, the record does not establish that the employees of Pharma Center possess such a substantial community of interest with the Employer's employees to compel their inclusion in the same unit. *J&L Plate*, 310 NLRB 429 (1993); *Executive Resources Associates*, supra. In reaching this decision, I note that a labor organization need not seek to represent employees in the ultimate, or even in the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). The only requirement is that the employees constitute an appropriate unit. Although not controlling, a union's desires is a relevant consideration in determining the appropriateness of a unit. *Marks Oxygen Co.*, 147 NLRB 228 (1964).

The fact that the Employer and Pharma Center may constitute a single employer does not render the unit sought by the Petitioner limited to the Employer's employees inappropriate. Indeed, the Board found in *A-1 Fire Protection*, supra, that the employees of two entities that made up a single employer did not constitute one bargaining unit notwithstanding that the two entities, like here, operated from the same facility, shared the same trucks, tools, equipment, and materials without reimbursement and, unlike here, even frequently interchanged employees. See also *B & B Industries*, 162 NLRB 832 (1967); *Towne Ford Sales*, 270 NLRB 311 (1984); and *Renzetti's Market*, 238 NLRB 174 (1978). See also *Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977).

In reaching my decision, I note that the Employer has not cited any authority for compelling the inclusion of employees of two separate entities into the same unit even when the entities constitute a single employer. The cases relied on by the Employer are clearly distinguishable from the instant case. *Transerv Systems*, 311 NLRB 766 (1993), cited by the Employer, involved the composition of the unit. The Board merely held that a unit limited to bike messengers, excluding driver messengers, of an individual employer was not appropriate because all messengers perform essentially the same functions. In *Phoenician*, 308 NLRB 862 (1992), the Board found that a unit limited to an individual employer's golf course maintenance employees, excluding landscape employees who worked with them, was inappropriate. *A. C. Pavement Striping Co.*, 296 NLRB 206 (1989), involved an issue of whether certain employees of an individual employer constituted separate craft groups or whether an overall unit was appropriate. The Board agreed with the Regional Director that only an overall unit was appropriate. *Peerless Electric Co.* (unpublished official volume), 38 LRRM 1386 (1956), merely found that two plants of the same individual employer constituted the only appropriate unit based on integration of operations. The other cases cited by the Employer refer only to the community-of-interest standards utilized by the Board in making unit determinations and do not specifically apply to the facts in the subject case. Indeed, the cases relied on by the Employer are not analogous to this case and do not support the Employer's position that the employees of two separate entities must be combined in the same unit merely because the separate entities may constitute a single employer, particularly where, as here, the two corporations manufacture different products and reimburse each other for any work performed by the other and employees work under separate supervision. Although the employees for both corporations share the same facility amenities and may attend the same social functions, the work force of the two companies is not commingled and there is minimal temporary employee interchange. Indeed, the work areas of the two companies are separated by air-locked doors and Pharma Center, being engaged in the manufacture of pharmaceutical packaging, is maintained, contrary to the Employer, in pristine condition. *A-1 Fire Protection*, supra.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that the record does not mandate the inclusion of the Pharma Center employees in the same unit with

the Employer's employees whom the Petitioner seeks to represent and that the Employer's employees constitute an appropriate unit for the purposes of collective bargaining. *A-1 Fire Protection*, supra. Accordingly, I shall exclude the Pharma Center employees from the unit.

Maintenance Employees

The Employer, as previously noted, asserts that the maintenance employees must be included in any unit found appropriate given the close community of interest its maintenance employees share with production employees. I find, however, that the record evidence is insufficient to compel inclusion of the maintenance employees in the unit sought by the Petitioner. In contrast to the production employees, the maintenance employees are in a separate department and have their own supervision. Although shift supervisors have some authority over maintenance employees when their regular supervisors are unavailable, it appears that any directions given by production supervisors relate to the priority in which certain repairs are to be undertaken. There is no evidence that the shift supervisors have disciplined or effectively recommended discipline of maintenance employees. Although maintenance employees have daily contact with production employees, it is limited to identifying and repairing machinery malfunctions. Production employees may make minor repairs and assist maintenance employees by holding tools, but their participation is minimal and incidental to the repair process. Although production employees have been permitted to perform maintenance duties during plant shutdowns, such work is unskilled and largely limited to custodial functions.

The extremely limited number of transfers from production to maintenance reflects the differences in training, job skills, and duties. Almost the entire maintenance complement has been hired from outside applicants and no production employees even applied for the last available maintenance vacancy. Although maintenance employees are not required to hold licenses and arguably do not qualify as "craft" employees, it is clear that applicants are expected to possess job-related experience. The two production employees who bid into maintenance jobs are in entry level positions and hold lower labor grades than the other maintenance employees. The majority of the maintenance employees are in pay grades 11 and 12, similar to the pay grades of press operators, who are the highest paid production employees. Moreover, two maintenance employees hold pay grade 14, a higher level than that of any production employee.

Based on the foregoing, the record as a whole, and careful review of the arguments of the parties at the hearing and in the Employer's brief, I find that the community-of-interest factors are not so substantial as to mandate the inclusion of maintenance employees in a production unit. *Overnite Transportation*

Co., 322 NLRB 723 (1996); *Ore-Ida Foods*, 313 NLRB 1016 (1994); and *American Cyanamid Co.*, 131 NLRB 909 (1961). As discussed in considering the unit placement of the Pharma Center employees, a labor organization need not seek the only or even the most appropriate unit but is required to seek only an appropriate unit. *Morand Bros. Beverage Co.*, supra. The cases relied on by the Employer in its brief are distinguishable. *RTW Industries*, 296 NLRB 910 (1989), concerned a successor employer's refusal to recognize and bargain with the union representing the predecessor's employees in a production and maintenance unit. The successor employer took the position that the unit was inappropriate but failed to offer evidence in support of its contention. Here, there is no established production and maintenance unit. Rather, the Petitioner merely wishes to exclude the maintenance employees from an initial production employee unit. Similarly, in *Appliance Supply Co.*, 127 NLRB 319 (1960), the petitioning labor organization sought a production and maintenance unit, which the employer opposed as "inappropriate" without evidentiary justification. *Beaumont Forging Co.*, 110 NLRB 2200 (1954), also involved a situation in which the union sought a broad production and maintenance unit while the employer asserted that only smaller departmental units were appropriate. The Board found the broad unit sought by the Union to be an appropriate unit. Here, the Petitioner seeks a unit limited to the production employees. *Overnite Transportation Co.*, supra. Under these circumstances, Board precedent does not mandate inclusion of the maintenance employees in the unit sought. Accordingly, I shall exclude the maintenance employees from the unit.

The Unit

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time production employees, including press operators, assistant operators, helpers, slitter operators, die cutters, packers, material handlers, recycle attendants, shipping and receiving employees, cylinder retrieval employees, ink technicians, parts, washers and mixers employees, and quality assurance lab technicians employed by the Employer at its Shelbyville, Kentucky facility, but excluding all maintenance employees, all employees of Pharma Center Shelbyville Inc., all office clerical employees, managerial employees and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.